

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Elijah Marshall, #186970,)	
Petitioner,)	C/A No. 6:11-cv-02591-GRA
)	
v.)	ORDER
)	(Written Opinion)
Warden Cartledge,)	
)	
Respondent.)	
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This matter comes before the Court for a review of the magistrate's Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(c) DSC, filed on November 10, 2011. See ECF No. 15. Petitioner brought this action pursuant to 28 U.S.C. § 2254 on September 27, 2011. See ECF No. 1. Magistrate Judge Kevin F. McDonald recommends dismissing this petition because Petitioner has not requested permission from the Fourth Circuit Court of Appeals to file a successive § 2254 petition.

Petitioner brings this claim *pro se*. This Court is required to construe *pro se* pleadings liberally. Such pleadings are held to a less stringent standard than those drafted by attorneys. See *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). This Court is charged with liberally construing a pleading filed by a *pro se* litigant to allow for the development of a potentially meritorious claim. See *Boag v. MacDougall*, 454 U.S. 364, 365 (1982).

The magistrate makes only a recommendation to this Court. The recommendation has no presumptive weight, and responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objections are made, and this Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). This Court may also “receive further evidence or recommit the matter to the magistrate with instructions.” *Id.* In the absence of specific objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198, 198–99 (4th Cir. 1983). Petitioner filed objections on November 28, 2011. *See* ECF No. 19.

Construing Petitioner’s Objections to the Report and Recommendation liberally, Petitioner appears to be objecting that the magistrate erred by dismissing the immediate petition as successive because it is based on newly discovered evidence. Though the Fourth Circuit Court of Appeals may authorize a district court to consider a successive petition containing newly discovered evidence, “[i]n the absence of pre-filing authorization, the district court is without jurisdiction to entertain successive[s].” *Easter v. Johnson*, 107 F. App’x 348, 2004 WL 1857999, at *1 (4th Cir. Aug. 19, 2004) (citing *Evans v. Smith*, 220 F.3d 306, 325 (4th Cir. 2000)). Therefore, regardless of any newly discovered evidence that

the petitioner may allege, this Court cannot consider the petitioner's current unauthorized, successive § 2254 petition.

After reviewing the magistrate's Report and Recommendation, relevant case law, and Petitioner's objections, this Court finds that the Report and Recommendation applies sound legal principles to the facts of this case. Therefore, this Court adopts it in its entirety.

IT THEREFORE ORDERED THAT Petitioner § 2254 motion be dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "G. Ross Anderson, Jr.", is written over a horizontal line.

G. Ross Anderson, Jr.
Senior United States District Judge

December 6, 2011
Anderson, South Carolina

NOTICE OF RIGHT TO APPEAL

Petitioner has the right to appeal this Order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure. Failure to meet this deadline, as modified by Rule 4 of the Federal Rules of Appellate Procedure, will waive the right to appeal.